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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

URSULLA FALCONARIE, APPELLANT,

v.

CASPER J. WOLF, JAILOR OF THE CITY OF ST. LOUIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

WASHINGTON: GOVERNMENT PRINTING OFFICE, 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

URSZULIA ZAKONAITE, APPELLANT,
v.
CASPER J. WOLF, JAILOR OF THE City of St. Louis. } No. 53.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

The appellant, a native of Russia, of the Lithuanian race (R., 20), was ordered deported by the Secretary of Commerce and Labor because she "is a prostitute and has been found practicing prostitution within three years after landing has not elapsed" (R., 7).

She applied to the District Court for a writ of habeas corpus, alleging that the answers she had made to the immigration inspector who had examined her through an interpreter, had been misinterpreted, through fraud or mistake, and that she

had not, as charged, admitted that she was a prostitute (R., 2).

The writ issued (R., 3), and a return was filed thereto (R., 5), in which it was alleged, in substance, that petitioner was apprehended upon a warrant issued by the Acting Secretary of Commerce and Labor (R., 5–6), and, after a due hearing, was ordered deported (R., 6–7). The return further alleged that the District Court was without jurisdiction to pass upon the truth or falsity of the charge against petitioner, and that her remedy lay in an appeal to the Secretary of Commerce and Labor.

A supplemental return was filed, in which it was alleged that petitioner had been granted a rehearing by the Secretary of Commerce and Labor, who had, upon a careful consideration of the entire evidence, reaffirmed his previous decision that the alien be deported. (R., 9.)

The reply to the return (R., 11) alleged that there was no evidence submitted to the Acting Secretary of Commerce and Labor upon which a warrant of deportation could be based; that the answers of petitioner at the hearing before the inspector had been misinterpreted; and that section 3 of the immigration act of February 20, 1907, was unconstitutional, in that it attempts to interfere with the police powers of the State.

The reply also alleged that petitioner had been unlawfully apprehended in the State of Illinois and removed by force into the State of Missouri and within

the jurisdiction of the court, without a judicial order of removal.

The court, in an opinion, dismissed the petition, holding that "the Secretary is the sole judge of the testimony upon which he based the warrant of deportation," and that "the act of Congress under which he acted is a valid law and free from the objection urged against it." (R., 13–15.)

Thereupon this appeal was taken. (R., 16–18.)

ARGUMENT.

I.

Constitutional provisions relating to the trial of crimes have no application to deportation proceedings.

Appellant's brief is devoted almost exclusively to arguments against the jurisdiction of the immigration authorities, based upon the idea that these deportation proceedings constitute a criminal case. This is, of course, clearly erroneous, and therefore the provisions of the Constitution relating to trial by jury in the district where the offense was committed, etc., have no application.

In *Fong Yue Ting* v. *United States* (149 U. S., 698, 730) the court, speaking of the proceedings for the deportation of Chinese provided by the act of May 5, 1892, said:

> The proceeding before a United States judge, as provided for in section 6 of the act of 1892, is in no proper sense a trial and sen-

tence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty or property, without due process of law, and the provisions of the Constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application.

In *Turner* v. *Williams* (194 U. S., 279, 289–290) the court said:

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regula-

> tions to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application.

See also *Keller* v. *United States*, 213 U. S., 138, 143; *Low Wah Suey* v. *Backus*, 225 U. S., 460, 468.

Counsel for appellant misinterprets the statement in *United States* v. *Zucker* (161 U. S., 481), that "the Sixth Amendment relates to a prosecution of an accused person which is *technically* criminal in its nature." These words were used in exactly the opposite sense to that given them by counsel; that is to say, for the purpose of stating that the Sixth Amendment was limited to strictly criminal cases. This is shown by the holding in that case that, in an action against importers to recover the value of merchandise forfeited to the United States under the customs laws, the defendants were not entitled to be confronted with the witnesses against them, but their testimony might be adduced by deposition.

After making the statement referred to, the court in the Zucker case said (161 U. S., 481):

> * * * The words, in the Sixth Amendment, "to be informed of the nature and cause of the accusation," obviously refer to a person accused of crime, whether a felony or misdemeanor, for which he is prosecuted by indictment or presentment, or in some other authorized mode which may involve his personal security. So the clause declar-

> ing that the accused, in a criminal prosecution, is entitled "to be confronted with the witnesses against him" has no reference to any proceeding (although the evidence therein may disclose, of necessity, the commission of a public offense) which is not directly against a person who is accused, and upon whom a fine or imprisonment, or both, may be imposed.

It is only when punishment, by way of fine or imprisonment for a violation of law, is sought to be imposed upon an alien in connection with his deportation that the matter becomes criminal and a judicial trial is required.

> *Wong Wing* v. *United States*, 163 U. S., 228, 237.

For the same reasons the argument that these deportation proceedings are an interference with the police powers of the State is without merit.

II.

The findings of the Secretary of Commerce and Labor were conclusive.

The conclusiveness of the findings made by the Secretary of Commerce and Labor in these deportation cases, where a fair hearing has been accorded the petitioner, is also settled by the decisions of this court.

> *Low Wah Suey* v. *Backus*, 225 U. S., 460, 468.
> *Tang Tun* v. *Edsell*, 223 U. S., 673.
> *Chin Yow* v. *United States*, 208 U. S., 8.

In the *Chin Yow* case, the court said (208 U. S., 11):

> * * * If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court, if it has any jurisdiction at all.

The record shows that appellant had a fair hearing before the immigration authorities, and that the evidence adduced at that hearing supported the finding that she was a prostitute. At the hearing before the immigrant inspector, after the warrant of arrest, charging that she was a prostitute and was found practicing prostitution (R., 5), had been read and explained and she had waived representation by counsel, *appellant admitted that she was a prostitute* (R., 20–23). She later denied such an admission (R., 31–39), but witnesses testified that she was "commonly known as a prostitute" (R., 29); that they had "frequently seen her with different men on the streets under such circumstances as to indicate that she is a woman of bad character and a common prostitute" (R., 29); that "she conducts herself on the street like a common prostitute," this witness having "often seen her roping or soliciting men and taking them with her" (R., 30), and police officers testified that a house of prostitution was conducted at the place where she lived (R., 57–58).

The pastor of the Lithuanian Roman Catholic Church testified that the place where she lived was

known to him as "a nest of prostitutes" and that "from her appearance, her actions, the places she visits, the company she keeps, and from reliable information I have received from my devoted parishioners, I have no hesitancy in saying that she is a prostitute" (R., 30). The interpreter stated (R., 20):

> She is now a prostitute, and when I went to her room to find out when did she come to this country she asked me to go to bed with her.

From the supplemental return (R., 9) it appears that a rehearing was granted appellant by the Secretary of Commerce and Labor, and that after careful consideration of the entire evidence the former decision that she should be deported was affirmed.

The contention that there was no evidence before the Secretary to justify the deportation of appellant is therefore without merit, as also the contention that the District Court erred in not permitting the introduction of further evidence. It is to be noted that the assignments of error (R., 17) contain the only intimation in the record that the court refused to permit the introduction of further evidence.

III.

The plenary authority of Congress to expel aliens is no longer open to question.

The opinion of the court (R., 13–15) suggests the question whether Congress has authority to order the deportation of an alien who was not objectionable at

the time she entered the United States. This question is of course settled by the decisions with respect to the Chinese, which are to the effect that the power to deport or exclude foreigners is absolute and unqualified.

In *Fong Yue Ting* v. *United States* (149 U. S., 698), the alien concerned had entered the country lawfully and had been a permanent resident since 1879. He was arrested for not having the certificate of residence required by the act of May 5, 1892. In sustaining the judgment of the Circuit Court dismissing a writ of habeas corpus, this court said (pp. 707, 713):

> The right of a nation to expel or deport foreigners, who have not been naturalized or taken any steps toward becoming citizens of the country, rests upon the same grounds, and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country. * * *
>
> The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power.
>
> The power of Congress, therefore, to expel, like the power to exclude aliens, or any specified class of aliens, from the country, may be exercised entirely through executive officers.

So, in *Wong Wing* v. *United States* (163 U. S., 228, 237), the court said:

> * * * We regard it as settled by our previous decisions that the United States

can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree and causing their deportation, upon executive or subordinate officials.

* * * * *

No limits can be put by the courts upon the power of Congress to protect, by summary methods, the country from the advent of aliens whose race or habits render them undesirable as citizens, or to expel such if they have already found their way into our land and unlawfully remain therein.

IV.

All the questions presented being well settled, the appeal should be dismissed or the judgment below affirmed.

It is respectfully submitted that, as the questions presented in this record have all been settled by the decisions of this court, the appeal should be dismissed or the judgment of the District Court affirmed.

Yeung How v. *North*, 223 U. S., 705.

Mike Beecham v. *United States*, 223 U. S., 708.

WILLIAM R. HARR,
Assistant Attorney General.

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ZAKONAITE *v.* WOLF, JAILOR OF THE CITY OF ST. LOUIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 53. Argued November 14, 1912.—Decided December 2, 1912.

The evidence in this case, upon which the order of deportation of an alien on the ground that she was a prostitute and was found practic-

ing prostitution within three years after her entry into the United States was based, being adequate to support the conclusions of fact of the Secretary of Commerce and Labor, and there having been a fair hearing, those findings are not subject to review by the courts.

The authority of Congress to prohibit aliens from coming within the United States includes the authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the country depends.

A proceeding to enforce regulations under which aliens may continue to reside within the United States is not a criminal proceeding within the meaning of the Fifth and Sixth Amendments.

Congress may properly devolve a proceeding to enforce regulations under which aliens are permitted to remain within the United States upon an executive department or subordinate officials thereof and may make conclusive the findings of fact reached by such officials after a summary hearing, if fair.

Section 3 of the act of February 20, 1907, 34 Stat. 898, c. 1134, providing for deportation of alien prostitutes within three years after entry into the United States and providing a summary proceeding for determining the fact by the Secretary of Commerce and Labor, does not violate either the Fifth or Sixth Amendment by depriving the alien of her liberty without due process of law or by denying her a jury trial.

THE facts are stated in the opinion.

Mr. L. G. Pope, with whom *Mr. Chas. F. Joy* and *Mr. Henry B. Davis* were on the brief, for appellant.

Mr. Assistant Attorney General Harr for appellee.

Memorandum opinion, by direction of the court, by MR. JUSTICE PITNEY.

The appellant, having been arrested and held in custody under warrants of arrest and deportation issued by the Acting Secretary of Commerce and Labor under the Immigration Act of February 20, 1907, sought to be discharged upon *habeas corpus* issued out of the Dis-

trict Court, and, that court having upon hearing ordered the dismissal of the writ, she prosecutes this appeal.

From the return and supplemental return of the respondent it appears that the appellant is an alien and that as the result of a hearing and re-hearing conducted in compliance with Rule 35, paragraph E of the Rules and Regulations of the Department of Commerce and Labor, she was found to be in the United States in violation of § 3 of the act referred to, and subject to deportation, in that she was a prostitute, and had been found practicing prostitution within three years after her entry into the United States.

In her behalf it was contended in the court below, and is here contended, first, that there was no evidence before the Secretary of Commerce and Labor sufficient to warrant the findings of fact upon which the order of deportation was based; and, secondly, that § 3 of the act of February 20, 1907 (34 Stat. 898, 899, c. 1134), which provides that "any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States, and shall be deported as provided by sections twenty and twenty-one of this Act,"—is unconstitutional because violative of the guaranties that no person shall be deprived of life, liberty or property without due process of law, and that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, as contained in the Fifth and Sixth Amendments.

As to the first point, an examination of the evidence upon which the order of deportation was based convinces us that it was adequate to support the Secretary's con-

clusion of fact. That being so, and the appellant having had a fair hearing, the findings are not subject to review by the courts.

With respect to the second point little more need be said. It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend; that a proceeding to enforce such regulations is not a criminal prosecution within the meaning of the Fifth and Sixth Amendments; that such an inquiry may be properly devolved upon an executive department or subordinate officials thereof, and that the findings of fact reached by such officials, after a fair though summary hearing, may constitutionally be made conclusive, as they are made by the provisions of the act in question. *Fong Yue Ting* v. *United States*, 149 U. S. 698, 730; *United States* v. *Zucker*, 161 U. S. 475, 481; *Wong Wing* v. *United States*, 163 U. S. 228, 237; *Turner* v. *Williams*, 194 U. S. 279, 289; *Chin Yow* v. *United States*, 208 U. S. 8, 11; *Tang Tun* v. *Edsell*, 223 U. S. 673, 675; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468.

The appellant raises some other constitutional objections, viz.: that the Immigration Act vests in the Federal authorities the power to try an immigrant for a violation of the penal laws of the State of which he has become a resident, and so interferes with the police powers of the State; that the act vests judicial powers in an executive branch of the Government; that it violates the constitutional guaranty of the privilege of the writ of *habeas corpus*, and the like. These are without substance, and require no discussion.

Final order affirmed.